IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :
THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

CRL.A.No. 335 of 2001(Y)

ST.1569/1997 of JUDL. MAGISTRTE OF FIRST CLASS COURT-III, THRISSUR

APPELLANT: COMPLAINANT:

M/S.POORAM KURIES & LOANS (P) LTD., THRISSUR, REPRESENTED BY POWER OF ATTORNEY HOLDER AND MANAGER, K.MURALEEDHARAN, S/O.CHAKATH ACHUTHA MENON, THRISSUR VILLAGE, KOTTAPURAM DESOM, THRISSUR.

BY ADV. SRI.M.C.MADHAVAN
SRI.MAHESH MADHAVAN

RESPONDENTS: ACCUSED:
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1. JOY JOHN, S/O.THERATTIL JOHN, ARANATTUKARA VILLAGE, VALIYANGADI, THRISSUR.

2. THE STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.M.V.BOSE FOR R1
SRI.VINOD MADHAVAN
SMT.NISHA BOSE
P.P.SRI.PUZHAKKARA MUHAMMED FOR R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl. A. No. 335 of 2001

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Dated this the 22nd day of June, 2007

JUDGMENT

The appeal is filed against the judgment in S.T.No.1569/97 on the file of the Judicial Magistrate of the First Class -III, Thrissur. The case of the petitioner is the the 1st respondent, who was a subscriber in the chitty statement Nos.16 and 161 conducted by the petitioner firm, defaulted the payment of the chitty amount and when he demanded for the payment of the defaulted amount with interest, the 1st respondent issued a cheque dated 10-6-1997. The further case of the petitioner is that when the the cheque was presented for encashment, it was dishonoured stating that "account closed". After complying the statutory requirements, the complaint has been filed before the court. PW1 was examined for an on behalf of the petitioner and Exts.P1 to P8 were marked. When the 1st respondent was questioned under section 313 Cr.P.C., he denied the allegation. After accepting the contention that the account was not alive at the time of issuance of the cheque ,the trial court found that offence under section 138 of Negotiable Instruments Act was not attracted. Hence the trial court acquitted the 1st respondent.

2. Considering the judgment under appeal and the arguments of the counsel appearing on both sides and as per the decision reported in Vathsan V. Japahari (2003(3) KLT 972), this Court is of the view that situation where cheques have been issued against an account, which has been closed prior to the date of drawl of the cheque, shall come within the fold of Section 138 of the Act to attract criminal liability. In a decision reported in Goaplast (P) Ltd. V. Chico Ursula D'Souza and another ((2003)3 SCC 232) the Apex Court held that section 138 of the Negotiable Instruments Act would be attracted in a case where a person issuing a post-dated cheque stops its payment by issuing instructions to the drawee bank before the due date of payment.

3. In the above circumstances, the impugned judgment is set aside and the matter is remanded to the trial court for fresh consideration. The parties are permitted to adduce additional evidence, if any, to substantiate their case.

The appeal is allowed as above.

The parties shall appear before the court on 17th August, 2007.

K. Thankappan,
Judge.

mn.

K.Thankappan,J.

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ORDER

22-6-2007